

HOUSE BILL NO. 330

INTRODUCED BY JOPEK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIS FOR A GOVERNING BODY'S DECISION ON A PROPOSED SUBDIVISION AND CRITERIA FOR REVIEW; ELIMINATING THE PROHIBITION ON DENYING A PROPOSED SUBDIVISION BASED SOLELY ON ITS IMPACT ON EDUCATIONAL SERVICES; PROVIDING THAT A GOVERNING BODY MAY NOT APPROVE A PROPOSED SUBDIVISION THAT IT FINDS IS NOT IN THE PUBLIC INTEREST; REQUIRING A GOVERNING BODY'S WRITTEN FINDINGS OF FACT TO ADDRESS WHETHER A PROPOSED SUBDIVISION COMPLIES WITH AN ADOPTED GROWTH POLICY AND IS IN THE PUBLIC INTEREST; GIVING THE GOVERNING BODY THE OPTION OF EXEMPTING A PROPOSED SUBDIVISION FROM CERTAIN REVIEW CRITERIA IF IT IS IN AN AREA WHERE A GROWTH POLICY HAS BEEN ADOPTED; ALLOWING A GOVERNING BODY TO DENY A PROPOSED SUBDIVISION IF IT FINDS THAT THE SUBDIVISION DOES NOT COMPLY WITH AN ADOPTED GROWTH POLICY; AND AMENDING SECTIONS 76-3-505 AND SECTION 76-3-608, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 76-3-505, MCA, is amended to read:~~

~~"76-3-505. Provision for summary review of minor subdivisions. (1) Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.~~

~~(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:~~

~~(i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and~~

~~(ii) may be exempt from review by the governing body of the criteria in 76-3-608(3)(a).~~

~~(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that~~

1 ~~is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."~~

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3 **Section 1.** Section 76-3-608, MCA, is amended to read:

4 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to
5 approve, conditionally approve, or disapprove a proposed subdivision is whether the preliminary plat, applicable
6 environmental assessment, public hearing, planning board recommendations, or additional information
7 demonstrates that development of the proposed subdivision ~~complies with the growth policy,~~ meets the
8 requirements of this chapter, ~~and is in the public interest.~~ ~~A governing body may not deny approval of a~~
9 ~~subdivision based solely on the subdivision's impacts on educational services~~ A governing body may not
10 approve a proposed subdivision that it finds is not in the public interest.

11 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as
12 applicable, ~~and that address whether the proposed subdivision complies with a growth policy adopted pursuant~~
13 ~~to Title 76, chapter 1, and is in the public interest.~~

14 (3) A subdivision proposal must undergo review for the following primary criteria:

15 (a) except when the governing body has established an exemption pursuant to subsection (7) of this
16 section or except as provided in 76-3-505 and 76-3-509, the effect on agriculture, agricultural water user
17 facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

18 (b) compliance with:

19 (i) the survey requirements provided for in part 4 of this chapter;

20 (ii) the local subdivision regulations provided for in part 5 of this chapter; ~~and~~ AND

21 (iii) the local subdivision review procedure provided for in this part; ~~and~~

22 ~~(iv) the growth policy adopted pursuant to Title 76, chapter 1;~~

23 (c) the provision of easements for the location and installation of any planned utilities; and

24 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
25 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

26 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably
27 minimize potentially significant adverse impacts identified through the review required under subsection (3). The
28 governing body shall issue written findings to justify the reasonable mitigation required under this subsection
29 (4).

30 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under

subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to Title 76, chapter 1, and the proposed subdivision will comply with the growth policy, the subdivision ~~is may be~~ is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.

(7) The governing body may exempt ~~proposed~~ subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to Title 76, chapter 1, that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a);

and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.

~~—— (8) The governing body may deny approval of a proposed subdivision if it finds that the proposed subdivision does not comply with the growth policy adopted pursuant to Title 76, chapter 1."~~

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